



IN THE
Supreme Court of the United States
OCTOBER TERM, 1979

No. 79-342

STATE OF WASHINGTON, *Respondent*,

v.

BENJAMIN A. REED, *Appellant*.

**RESPONSE TO PETITION FOR A
WRIT OF CERTIORARI**

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A.

RESUME OF PROCEEDINGS

The respondent accepts the petitioner's resume of proceedings. The written opinions of the trial court and the Washington State Supreme Court are attached as Appendices A and B and are incorporated by this reference.

B.

STATEMENT OF JURISDICTION

The petitioner is appealing a decision rendered by the Washington Supreme Court. This state court decision relies upon several decisions by this Court which have decided these issues and the State Court holdings are in accord with these decisions. Therefore, the petition for writ of certiorari should be denied.

C.

QUESTIONS PRESENTED FOR REVIEW

1. Is a regulation promulgated by the State of Washington in compliance with a United States District Court injunction valid as to Indian fishing outside an Indian reservation?
2. Does the State have to show that a Department of Fisheries regulation is reasonable and necessary for conservation purposes beyond a reasonable doubt or may its validity be proved by clear and convincing evidence?

D.

STATUTORY PROVISIONS

This petition involves the following constitutional provisions, treaties and statutes.

I. Article VI, paragraph 2, of the United States Constitution.

This Constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made under the authority of the United States, shall be the Supreme Law of the land; and judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.

II. The Treaty of Medicine Creek made with the Puyallup and Nisqually Indians in 1854 (10 Stat. 1132). (See Appendix C).

III. Revised Code of Washington 75.08.080:

Rules and Regulations—Scope. The director shall investigate the habits, supply and economic use of, and classify, the food fish and shellfish in the

waters of the state and the offshore waters, and from time to time, make, adopt, amend, and promulgate rules and regulations as follows:

- (1) Specifying the times when the taking of any or all the various classes of food fish and shellfish is lawful or prohibited.
- (2) Specifying and defining the areas, places, and waters in which the taking and possession of the various classes of food fish and shellfish is lawful or prohibited.
- (3) Specifying and defining the types and sizes of gear, appliances, or other means that may be lawfully used in taking the various classes of food fish and shellfish, and specifying the times, places, and manner in which it shall be lawful to possess or use the same.
- (4) Regulating the possession, disposal, and sale of food fish and shellfish within the state, whether acquired within or without the state, and specifying the times when the possession, disposal, or sale of the various species of food fish or shellfish is prohibited.
- (5) Regulating the prevention and suppression of all infectious, contagious, dangerous, and communicable diseases and pests affecting food fish and shellfish.
- (6) The fixing of the size, sex, numbers, and amounts of the various classes of food fish and shellfish that may be taken, possessed, sold or disposed of.
- (7) Regulating the landing of the various classes of food fish and shellfish or parts thereof with the state.
- (8) Regulating the destruction or predatory seals and sea lions and other predators destructive of food fish or shellfish, and specifying the proof of the destruction of the same that shall be required.

(9) Specifying the statistical and biological reports that shall be required from licensed or non-licensed fishermen, dealers, boathouses, handlers, or processors of food fish and shellfish.

(10) Specifying which species of marine and freshwater life are food fish and shellfish.

(11) Classifying the species of food fish and shellfish or parts thereof that may be used for purposes other than human consumption.

(12) Promulgating such other rules and regulations as may be necessary to carry out the provisions of this title and the purposes and duties of the department.

Subdivisions (1), (2), (3), (4), (6), and (7), shall not apply to licensed oyster farms or oysters produced thereon.

IV. Revised Code of Washington 75.08.012: Duties of the Department.

It shall be the duty and purpose of the department of fisheries to preserve, protect, perpetuate and manage the food fish and shellfish in the waters of the state and the offshore waters thereof to the end that such food fish and shellfish shall not be taken possessed, sold or disposed of at such times and in such manner as will impair the supply thereof. For the purpose of conservation, and in a manner consistent therewith, the department shall seek to maintain the economic well-being and stability of the commercial fishing industry in the state of Washington.

E.

STATEMENT OF THE CASE

The respondent accepts the petitioner's statement of the case except for the final paragraph. In that paragraph the petitioner asserts that the Supreme Court of

Washington held that as long as a conservation issue is shown, a regulation promulgated by the Department of Fisheries is valid whether or not there were additional reasons. In fact, the Washington Supreme Court held that the purpose of the regulation was for conservation and that this purpose had been demonstrated at trial.

F.

ARGUMENT FOR DENIAL OF WRIT

I

This court has dealt with the issue of state and federal regulation of Indian treaty fishing on several different occasions. See e.g., *Puyallup Inc. v. Department of Game*, 391 U.S. 392, 20 L.Ed.2d 689, 88 S.Ct. 1725 (1968), (*Puyallup One*); *Department of Game v. Puyallup Tribe*, 414 U.S. 44, 38 L.Ed.2d 254, 94 S.Ct. 330 (1973), (*Puyallup Two*); *Puyallup Tribe v. Washington Game Department*, 433 U.S. 165, 53 L.Ed.2d 667, 97 S.Ct. 26 (1977), (*Puyallup Three*). The *Puyallup* trilogy has resolved all of the issues which are being raised in the case *sub judice*. Accordingly, the petitioner can provide no basis for the granting of his petition for writ of certiorari.

In *Puyallup One*, the authority of the State of Washington to regulate fishing was challenged as well as the scope of the State's authority. The facts giving rise to the Puyallup Indian dispute involved use by the Indians of set nets to fish in Commencement Bay and the mouth of the Puyallup River in violation of a state statute. In an opinion written by Mr. Justice Douglas, this Court held that the State of Washington does possess the police power to regulate fish resources for the purpose of conservation as long as these regulations

are "reasonable and necessary" and also are non-discriminatory. *Id.* at 399, 696, 1729. In reaching its decision, this Court relied upon and approved the continuing validity of *Tulee v. State of Washington*, 315 U.S. 681, 62 S.Ct. 862, 86 L.Ed. 115 (1941).

In *Puyallup Two*, this Court reiterated its holding that the State of Washington does have the authority to regulate both Indian and non-Indian fishing where the statute or regulation has been established to be reasonable and necessary for the conservation of the fishery. The regulation at issue in *Puyallup Two* prohibited the Puyallup Indians from fishing commercially for steelhead while allowing steelhead sport fishing. This regulation was found to be discriminatory toward the Indians. However the Court made it clear that the decision was not intended to prevent that regulation necessary for conservation stating as follows:

We do not imply that these fishing rights persist down to the very last steelhead in the river. Rights can be controlled by the need to conserve a species; and the time may come when the life of a steelhead is so precarious in a particular stream that all fishing should be banned until the species regains assurance of survival. The police power of the state is adequate to prevent the steelhead from following the fate of the passenger pigeon; and the treaty does not give the Indians a federal right to pursue the last living steelhead until it enters their nets. *Id.* at 49, 333-334, 259.

Thus a non-discriminatory regulation established for the purpose of conservation is valid.

In 1977, after more than 15 years of litigation and two prior decisions by this court, *Puyallup Three* was

decided. After an extensive discussion of *Puyallup One* and *Puyallup Two*, the state was held to possess the authority to adjudicate the rights of individual defendants over whom it had properly obtained personal jurisdiction. The holdings of *Puyallup One* and *Puyallup Two* as to the authority of the state to regulate the fisheries resource for the purpose of conservation were once again reaffirmed. The last issue addressed in *Puyallup Three* concerned the findings made by the state as to what measure were reasonable and necessary for the conservation of fish. This court made it clear that in order to challenge these regulations, a specific attack must be made upon the factual determinations which provide the basis for the regulation.

The *Puyallup* trilogy clearly resolves all of the issues raised by the petitioner. The State of Washington had jurisdiction over the petitioner because he was arrested in waters under the control of the State of Washington. His attack on the validity of the regulation causing the closure of the waters where he was fishing is unsupported by a focused attack on factual determinations made by the Department of Fisheries at the administrative level or the expert testimony produced by the State of Washington at the trial.

As was made clear in the opinion in this case by the Washington Supreme Court, there is overwhelming evidence of the necessity of the closure of the waters where the petitioner was fishing. *State v. Reed*, 92 Wn.2d 271, — P.2d — (1979). At the administrative hearing on the regulation in question, evidence was received as to the necessity of the emergency closure. Pursuant to the Administrative Procedure Act, all affected parties were given notice of the hearing and were also given the opportunity to present evidence.

Id. at 272. Moreover, a copy of the regulation was filed with the United States District Court, which affirmed the state regulation. *Id.* at 275.

At trial, expert testimony was adduced establishing the need for the regulation to preserve the native coho salmon run. This testimony was unrebutted and clearly established that the temporary closure was reasonable and necessary for conservation. *Id.*

II

The second contention made in support of this Petition for a Writ of Certiorari is that the State was required to prove the validity of the challenged regulation beyond a reasonable doubt. This contention is also without merit. Clearly, the State is not required to establish the validity of a charging statute using a reasonable doubt standard. See *Ferguson v. Skrupa*, 372 U.S. 726, 10 L.Ed.2d 93, 83 S.Ct. 1028 (1962); *Williamson v. Lee Optical Co. of OKL*, 348 U.S. 483, 99 L.Ed. 563, 75 S.Ct. 461 (1955); *Hartman v. State Game Comm'n*, 85 Wn.2d 176, 532 P.2d 614 (1975).

Finally, *Washington v. United States*, — U.S. —, — L.Ed. —, 99 S.Ct. 3055 (1979) which was very recently decided by this Court provides an additional reason for the denial of the petition. In *Washington v. United States*, there was some discussion as to the scope of authority possessed by the District Court and the Departments of Game and Fisheries in this area. It was made clear that the District Court by use of the Supremacy Clause, could assume direct supervision of the fisheries and enter and enforce any order necessary to remedy violations of federal law. In the

instant case, there was testimony at trial that the federal court had approved the substance of the regulation in question two weeks prior to the petitioner's violation and that notice was given to the Puyallup Tribe of that regulation. To paraphrase the language of *Washington v. United States*, even if the regulation in question may have been erroneous in some respects, "all parties have an unequivocal obligation to obey them while they remain in effect." *Id.* at 3065.

The instant Petition for a Writ of Certiorari concludes with a quotation from Professor Ralph Johnson found in a 1972 Law Review article. (Petitioner's Brief at 13). This quotation addresses the need for the creation of standards to guide the states in their regulation of off-reservation fishing. This problem has been obviated by this Court's recent decision in *Washington v. United States*, *supra*, which has resolved these problems.

In summary, it is clear that the petitioner was fishing in waters controlled by the State of Washington giving the state personal jurisdiction. The petitioner was prosecuted pursuant to a temporary closure initiated by the Department of Fisheries. This regulation was adopted in compliance with the Administrative Procedure Act and was approved by the District Court. Testimony was produced at trial showing the necessity of the closure for the purpose of conserving coho salmon. These actions all comply with the many recent rulings by this Court. Therefore, the petition should be denied.

Respectfully submitted,

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APPENDIX.

[No. 45912. En Banc.

THE STATE OF WASHINGTON, Respondent,
v. BENJAMIN A. REED, Appellant

- [1] Fish -- Indians -- State Conservation Rules -- Treaty Indians. Validly enacted regulations which are necessary for conservation of the state fisheries resource may be applied in a nondiscriminatory manner to restrict both treaty and nontreaty fishing activities.
- [2] Judgment -- Collateral Attack -- Benefiting Party. A person who claims privity with a party to an action and claims benefits under the judgment in that action is bound by the rule of that case and cannot collaterally attack the judgment in a later action.
- [3] Fish -- Indians -- State Conservation Rules -- Enforcement -- Burden of Proof. In a prosecution of a treaty Indian for violation of a Department of Fisheries regulation, the prosecution must show, in addition to the regularity of adoption, that the regulation was reasonable and necessary for conservation purposes. Such showing is not a part of the elements of the crime charged, and need only be shown by clear and convincing evidence.

Nature of Action: The defendant, a treaty Indian, was convicted in district court of unlawful commercial gill-net fishing for salmon. He was fishing in a usual and accustomed tribal fishing ground which had been temporarily closed by a Department of Fisheries order.

Superior Court: The Superior Court, for Kitsap County, No. C-2616, Terence Hanley, J., entered a judgment of guilty on November 15, 1977.

Supreme Court: Holding that the regulation closing the fishery was valid and shown to be necessary to conservation, the court affirms the conviction.

Dire & Odell, by Timothy Odell, for appellant.

C. Danny Clem, Prosecuting Attorney, and John M. Hancock, Deputy, for respondent.

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IN THE SUPREME COURT OF THE
STATE OF WASHINGTON

STATE OF WASHINGTON,)
)
 Respondent,) No. 45912
) EN BANC
 v.)
)
 BENJAMIN A. REED,)
)
 Appellant.) Filed May 31, 1979

HOROWITZ, J.--This case turns on the question whether an emergency order of the Director of Fisheries, closing certain areas to sport and commercial coho salmon fishing in order to protect the native run of coho salmon, was validly applied to appellant. We find that it was and affirm appellant's conviction for violation of the regulation under RCW 75.08.260.

Appellant Benjamin Reed is a member of the Quinault Indian Tribe. His wife is a member of the Puyallup Indian Tribe and has tribal fishing rights. On September 30, 1975 appellant fished for salmon with gillnet gear in an area which was opened by Puyallup tribal regulations as usual and accustomed fishing grounds of the tribe. This same area was temporarily closed, however, by emergency Order No. 1283 of the State Director of Fisheries. The order was lawfully promulgated September 15, 1975 in accordance with all requirements of the Administrative Procedure Act, RCW 34.04. It was published in a newspaper of general circulation, the Daily Olympian, and copies were sent to numerous affected parties, including the tribal representatives and attorneys of the Puyallup Tribe. The regulation was also filed with the United States District Court in compliance with the injunction issued by District Judge George Boldt in United States v. State of Washington, 384 F. Supp. 312, 417 (W.D. Wash. 1974). Following a hearing, the regulation was approved in substance by that court.

Appellant Reed was prosecuted in Kitsap County District Court for unlawful commercial gillnet fishing for salmon and was found guilty. He now appeals. He concedes the State of Washington has the authority to close even usual and accustomed tribal fishing areas for conservation purposes. He contends, however, that the state failed to prove the regulation was valid and that in fact the regulation exceeded the authority of the Department of Fisheries. Moreover, he claims that he was validly assisting his wife, a Puyallup Indian, in the exercise of her right to fish in the usual and accustomed fishing grounds of the Puyallup Tribe.

Our disposition of this appeal rests solely on the ground that the regulation in question was valid and the state met its burden of proof in this regard at trial. A regulation which is validly promulgated and necessary for conservation purposes may be applied in a nondiscriminatory manner to restrict both treaty and nontreaty fishing. Puyallup Tribe v. Department of Game of State of Washington, 433 U.S. 165, 171, 53 L. Ed. 2d 667, 97 S. Ct. 2616 (1977) (Puyallup III); Puyallup Tribe v. Department of Game of State of Washington, 39 U.S. 392, 20 L. Ed. 2d 689, 88 S. Ct. 1725 (1968) (Puyallup I). If the regulation in question here was shown to be valid, the fact that appellant was allegedly exercising treaty fishing rights is irrelevant. Since we hold the regulation was shown to be valid, we do not reach the other questions raised, that is, whether appellant could assist his wife in the exercise of her fishing rights when she was not present, and what burden of proof must be met to establish as an affirmative defense that a treaty fisherman was fishing in a usual and accustomed tribal fishing ground.

Appellant attacks the validity ab initio of the regulation promulgated by emergency Order No. 1283 on the ground it exceeds the authority of the Department of Fisheries. He points to the preamble portion of the order, which states that adoption of the regulation "is necessary to preserve, protect and perpetuate coho salmon resources

in Puget Sound waters and to comply with Western Washington Federal District Court minute order signed by Judge George H. Boldt September 13, 1975." A part of the stated purpose of the regulation, appellant notes, is compliance with a federal order which flowed from the decision in United States v. Washington, supra at 342-343, 403, that allocation of fish resources is necessary to preserve treaty fishing rights. Therefore, appellant contends, the purpose of the regulation is allocation, an impermissible purpose for the Department of Fisheries under the rule of Puget Sound Gillnetters Ass'n v. Moos, 88 Wn.2d 677, 565 P.2d 1151 (1977).

Appellant claims the right to exercise Puyallup tribal fishing rights, and thus to be a beneficiary of the federal court's decision in United States v. State of Washington, supra, to which the Puyallup Tribe was a party. He is therefore bound by the rule of that case, which requires allocation, and may not now collaterally attack it on the ground the State of Washington may not allocate. See Williams v. Steamship Mutual Underwriting Ass'n, Ltd., 45 Wn.2d 209, 273 P.2d 803 (1954).

Even if appellant were not precluded from raising the argument, though, we find the regulation valid. The first stated purpose of the regulation is conservation. Expert testimony at trial established the need for the regulation in order to preserve the native coho salmon run. It applied to all fishermen, treaty and nontreaty alike, allowing salmon fishing only in specified areas in order to prevent serious harm to the natural run. Fishing regulation to be applied to treaty fishermen must be reasonable, in that they must employ conservation measures which are appropriate to their conservation purpose. United States v. State of Washington, supra at 342. See also Hartman v. State Game Comm'n, 85 Wn.2d 176, 179, 532 P.2d 614 (1975). Such regulations must also be necessary in that the measures employed must be essential to the interests of

conservation. Anoine v. Washington, 420 U.S. 194, 207, 43 L.Ed. 2d 129, 95 S. Ct. 944 (1975); United States v. State of Washington, supra at 342. We find those tests are met here. The evidence of the regulation itself, and the expert testimony at trial, clearly showed that the Director of Fisheries took this action as reasonable and necessary measure to protect the coho salmon resource. The federal court came to the same conclusion, issuing an order which reflected and thus affirmed the state regulation. Furthermore there was absolutely no evidence at trial that the regulation served an allocation purpose, and nothing in the regulation itself states that it does. The regulation thus meets the standards of both state and federal law with regard to its conservation purpose. We conclude the Director of Fisheries did not exceed his authority in promulgating the regulation in question, and it was valid.

Appellant contends, however, that the state has the burden to prove the validity of its regulation by proof beyond a reasonable doubt, and that it did not meet this burden at appellant's trial. We do not agree that the state's burden is so great, or that it failed to establish the necessity of the regulation.

This court has held that a presumption of validity attaches to a Department of Fisheries regulation once it has been adopted under the procedure required by the Administrative Procedure Act. Department of Game v. Puyallup Tribe, 80 Wn.2d 561, 574, 497 P.2d 171 (1972), rev'd on other grounds sub nom Washington Game Dep't v. Puyallup Tribe, 414 U.S. 44, 38 L. Ed. 2d 254, 94 S. Ct. 330 (1973) (Puyallup II). Where a prosecution for violation of a fishing regulation involves a treaty fisherman, though, the state must make a special showing. It must introduce evidence to show that the regulation was reasonable and necessary for conservation purposes. See United States v. Washington, supra at 342; Department of Game v. Puyallup Tribe, supra at 574. This special rule for establishing the validity of a state regulation

which has the force of law applies only because of the unique rights of treaty fishermen to fish their usual and accustomed fishing grounds, and the unique capacity of the Department of Fisheries to establish the relevant facts regarding conservation--the sole basis upon which those rights may be restricted. The rule is a method for showing that restriction of treaty fishing rights in the individual case is in fact reasonable and necessary for conservation. Establishment of the validity of a regulation in this matter is not, then, as appellant would have it, a part of the state's case in chief which must be proved beyond a reasonable doubt. In cases where the rule applies the state need only introduce clear and convincing evidence to show that the regulation was reasonable and necessary for conservation purposes. See United States v. State of Washington, supra at 342. The state has more than met that burden here.

The evidence introduced at trial to show the regulation was reasonable and necessary for conservation purposes included the preamble to the regulation itself, which states its conservation purpose, and the expert testimony of a fisheries biologist, Mr. A. Dennis Austin, who was the Program Leader for the Indian Fisheries Management Program. Mr. Austin's testimony specifically detailed the management principles and underlying facts which led to the temporary closure of the waters in which appellant fished. His testimony was un rebutted and established clearly that the conservation measure chosen, temporary closure, was appropriate to the conservation goal and necessary to protect the native coho run from serious harm. He also testified to the fact that the federal court (applying, we may infer, the standards of reasonableness and necessity for conservation which we apply here) approved the substance of the regulation 2 weeks prior to appellant's violation, and that Puyallup tribal representatives and attorneys had notice of the regulation. Under these circumstances we find the state met its

burden of showing the regulation was necessary for conservation purposes by clear and convincing evidence.

The judgment is affirmed.

/s/
Horowitz, J.

WE CONCUR:

| | |
|-----|-----|
| /s/ | /s/ |
| /s/ | /s/ |
| /s/ | /s/ |
| /s/ | /s/ |

IN THE SUPERIOR COURT OF THE)
STATE OF WASHINGTON FOR KITSAP)
COUNTY

Appendix B

| | |
|------------------------|------------|
| STATE OF WASHINGTON,) | |
| Plaintiff,) NO. C-2616 | |
| vs.) | |
| BENJAMIN A. REED,) | MEMORANDUM |
| Defendant.) | OPINION |

The Court has re-examined its notes taken at trial and the authorities cited by counsel. It concludes that defendant is guilty of the charge of unlawful fishing. Mr. Reed was fishing in an area claimed as its "usual and accustomed fishing grounds" by the Puyallup Tribe, during a time when the area was closed to all commercial fishing. Mr. Reed holds a card showing that he is an authorized fisherman of the Puyallup Tribe and claims exemption from the closure rules established by the State Department of Fisheries. Defendant claims further that this Court has no jurisdiction over his actions which are here charged as a crime due to the actions and rulings of the U.S. District Court for the Western District of Washington, Judge Boldt. The Court must reject each of these contentions.

Mr. Reed is, according to the evidence, of Indian descent. However he is a decedent [sic] of the Chinook-Chehalis Tribe which, according to the evidence, is entitled to fish in those usual and accustomed grounds shared by the Quinault Tribe. Mr. Reed holds a Tribal Fishing Card from the Quinault Tribe also. The Boldt decision is clear that an Indian may hold a card from one tribe only. Consequently, it appears that Mr. Reed's authority issued by the Puyallup tribe to fish as one of its members is void. Assuming that is not true, it is clear to the Court that, at the time in question, the Puyallup Tribe, although claiming the area in which Mr. Reed was fishing, had not had that area designated as a portion of its usual and accustomed

fishing grounds by the District Court. Judge Boldt, in his decision, established the procedure for the tribes to increase the area or change the boundaries of their usual and accustomed grounds. The Puyallups did not avail themselves of this procedure.

Several recent cases including the PUGET SOUND GILLNETTERS ASSOCIATION VS. MOOS, 88 Wn. 2d 677, have established that the State is entitled to regulate commercial fishing for conservation purposes. It may regulate fishing by Indians as well as non-Indians. There was ample testimony in the record of this case that the closure which Mr. Reed is accused of violating was made for conservation purposes.

Lastly, Mr. Reed claims that he was fishing to assist his wife. This is permitted, under the Boldt decision. However, it is difficult for the Court to see how Mr. Reed was "assisting" his wife when she was not present.

DATED this 14th day of July, 1977.

TERENCE HANLEY, Judge

Franklin Pierce,
President of the United States of America,
To all and singular to whom these Presents shall come
Greeting

Whereas a treaty was made and concluded at
the She-nah-mum, or Medicine Creek, in the
Territory of Washington, on the twenty sixth
day of December, one thousand eight hundred
and fifty four, between the United States
of America and the Nisqually and
other Bands of Indians, which treaty is
in the words following, to wit:

Articles of Agreement and Convention, made and concluded on the Sho-nah-nam or Medicine Creek in the Territory of Washington this twenty sixth day of December in the year one thousand eight hundred and fifty four, by Isaac J. Stevens, Governor and Superintendent of Indian Affairs of the said Territory on the part of the United States, and the undersigned Chiefs, headmen and delegates of the Nisqually, Puyallup, Stillacoom, Squawksin, Homamish, Steh-chuss, Tpeek-sin, Squi-ait and Sa-hen-wamish tribes and bands of Indians, occupying the lands lying within the bay of Puget Sound and the adjacent inlets, who for the purpose of this treaty are to be regarded as one nation, on behalf of said tribes and bands, and duly authorized by them.

Art. I The said tribes and bands of Indians hereby cede, relinquish and convey to the United States all their right, title and interest in and to the lands and country occupied by them, bounded and described as follows, to wit:

Commencing at the point on the eastern side of Admiralty Inlet, known as Point Pulley, about midway between Commencement and Elliott Bays; thence running in a South easterly direction, following the divide between the waters of the Puyallup and Cushman or White rivers to the summit of the Cascade Mountains, thence southerly along the summit of said range to a point opposite the main source of the Shookum Chuck Creek, thence to and down said Creek to the coal mine, thence Northwesterly to the summit of the Black Hills, thence northerly to the upper fork of the Tot-top river, thence Northwesterly through the postage known as Wilkes' postage to Point Southworth on the western side of Admiralty Inlet, thence around the foot of Vashon's Island easterly and south easterly to the place of beginning.

Art. II There is however reserved for the present use and occupation of the said tribes and bands, the following tracts of land, viz:

The small island called Klok-cha-min, situated opposite the mouth of Hammarby's and Tolson's inlets, and separated from Marlstone Island by Peale's passage, containing about two sections of land by estimation; A square tract containing two sections or twelve hundred and eighty acres on Puget Sound near the mouth of the Sho-nah-nam Creek, one mile west of the northern line of the United States Land Survey, and a square tract containing two sections or twelve hundred and eighty acres lying on the south side of Commencement Bay; All which tracts shall be set apart, and so far as necessary surveyed and marked out for their exclusive use, nor shall any white man be permitted to reside upon the same without permission of the tribe and the Superintendent or Agents, and the said tribes and bands agree

to remove to and settle upon the same within one year after the ratification of this treaty or sooner if the means are furnished them. In the meantime it shall be lawful for them to reside upon any ground not in the actual claim and occupation of citizens of the United States, and upon any ground claimed or occupied if with the permission of the owner or claimant. If necessary for the public convenience, roads may be run through their reserves, and on the other hand the right of way with free access from the same to the nearest public highway is secured to them.

Art. III The right of taking fish at all usual and accustomed grounds and stations is further secured to said Indians in common with all citizens of the Territory and of erecting temporary houses for the purpose of curing, together with the privilege of hunting, gathering roots and berries and pasturing their horses on open and unclaimed lands, Provided however that they shall not take shell fish from any beds, stacked or cultivated by citizens, and that they shall allow all stallions not intended for breeding horses and shall keep up and confine the latter.

Art. IV In consideration of the above cession, the United States agree to pay to the said tribes and bands the sum of Thirty two thousand, five hundred dollars in the following manner, that is to say, For the first year after the ratification hereof, three thousand, two hundred and fifty dollars; for the next two years three thousand dollars each year, for the next three years, two thousand dollars each year, for the next four years fifteen hundred dollars each year, for the next five years, twelve hundred dollars each year, and for the next five years one thousand dollars each year; All which said sums of money shall be applied to the use and benefit of the said Indians under the direction of the President of the United States, who may from time to time determine at his discretion upon what beneficial objects to expend the same, and the Superintendent of Indian Affairs, or other proper officer, shall each year inform the President of the wishes of said Indians in respect thereto.

Art. V To enable the said Indians to remove to and settle upon their aforesaid reservations, and to clear, fence and break up a sufficient quantity of land for cultivation, the United States agree to pay the sum of three thousand, two hundred and fifty dollars to be laid out and expended under the direction of the President and in such manner as he shall approve.

Art. VI The President may hereafter, when in his opinion

in the interests of the Territory may require, and the welfare of the said Indians be promoted, remove them from either or all of said reservations to such other suitable place or places within said Territory as he may deem fit, on removing them for their improvement and the expenses of their removal, or may consolidate them with other friendly tribes or bands. And he may further at his discretion cause the whole or any portion of the lands hereby reserved, or of such other land as may be selected in lieu thereof to be surveyed into lots, and assign the same to ^{such} individuals or families as are willing to avail themselves of the privilege, and will locate on the same as a permanent home; on the same terms and subject to the same regulations as are provided in the sixth article of the Treaty with the Omahas, so far as the same may be applicable. Any Substantial improvements hereafter made by any Indian and which he shall be compelled to abandon in consequence of this treaty, shall be valued under the direction of the President and payment be made accordingly therefor.

Art. VII. The annuities of the aforesaid tribes and bands shall not be taken to pay the debts of individuals.

Art. VIII The aforesaid tribes and bands acknowledge their dependence on the government of the United States, and to be friendly with all citizens thereof, and pledge themselves to commit no depredations on the property of such citizens. And should any one or more of them violate this pledge, and the fact be satisfactorily proved before the agent, the property taken shall be returned, or in default thereof, or if injured or destroyed, compensation may be made by the government out of their annuities. Nor will they make war on any other tribe except in self defence, but will submit all matters of difference between them and other Indians to the government of the United States or its agent for decision and abide thereby. And if any of the said Indians commit any depredations on any other Indians within the Territory, the same rule shall prevail as that prescribed in this article in cases of depredations against citizens. And the said tribes agree not to shelter or conceal offenders against the laws of the United States, but to deliver them up to the authorities for trial.

Art. IX. The above tribes and bands are desirous to exclude from their reservations the use of intoxicating spirits and to free their people from drinking the same, and therefore it is provided that any Indian belonging to said tribes who is guilty of bringing liquor into said reservations, or who drinks liquor, may have his or her proportion of the annuities withheld from him or her for such time as the President may determine.

Art. X. The United States further agree to establish, as the general agency for the District of Puget Sound, with in one year from the ratification hereof, and to support for a period of twenty years, an agricultural and industrial school, to be free to children of the said tribes and bands, in common with those of the other tribes of said district, and to provide the said school with a suitable instructor or instructors, and also to provide a smithy and carpenter's shop, and furnish them with the necessary tools, and employ a blacksmith, carpenter and farmer, for the term of twenty years, to instruct the Indians in their respective occupations. And the United States further agree to employ a physician to reside at the said central agency, who shall furnish medicine and advice to their sick and shall vaccinate them; the expenses of the said school, shops, employed and medical attendance, to be defrayed by the United States, and not deducted from the annuities.

Art. XI The said tribes and bands agree to free all slaves now held by them, and not to purchase or acquire others hereafter.

Art. XII The said tribes and bands finally agree not to trade at Vancouver's Island or elsewhere out of the dominions of the United States; nor shall foreign Indians be permitted to reside in their reservations without consent of the Superintendent or Agent.

Art. XIII This treaty shall be obligatory on the contracting parties as soon as the same shall be ratified by the President and Senate of the United States.

In testimony whereof the said Isaac S. Stevens, Governor and Superintendent of Indian Affairs and the undersigned Chiefs, headmen & delegates of the aforesaid tribes and bands have hereunto set their hands and seals at the place and on the day and year hereinbefore written.

Witness in the presence of us.

Wm. F. Kimmond
Isaac S. Stevens
James Doty
Secretary of the Commission
C. H. Nelson
Sey. Wash. Ter

Isaac S. Stevens
Gov. & Sup. Ter. Ind.
Sec. Comm. & Ld
Mo. Co. Comm. & Ld

| | | | |
|-------------------------|-------------------|---|-----|
| W. H. Staughter | Esth. nigh | X | Lot |
| 1st Lieut 4th Regt | Ship. o. d. m. | X | Lot |
| James K. Kallister | huni. ats | X | Lot |
| E. G. Godeling, Jr | tree nigh | X | Lot |
| George G. Godeling | bi. a. kich | X | Lot |
| Henry L. Cook | St. i. t. m. | f | Lot |
| J. S. Ford, Jr | Squa. tru. m. | X | Lot |
| Pro. W. McAlister | Kah. k. t. e. min | X | Lot |
| Erington G. G. Godeling | San. a. i. gull | X | Lot |
| John. Anderson | W. t. h. p. | X | Lot |
| Samuel C. Kallister | Sahl. ko. min | X | Lot |
| W. H. Gullen | St. i. t. m. | X | Lot |
| W. C. Hough | Toka. hoos. m. | X | Lot |
| E. R. G. Godeling | hi. chah. kat | X | Lot |
| George G. Godeling | Spee. pik | X | Lot |
| Bury H. Shaw | Swe. yah. tum | X | Lot |
| Interpreter | Chah. ach. k. | X | Lot |
| Harold Stevens | Pick. kich | X | Lot |
| | H. Klah. o. sum | X | Lot |
| | San. u. tatt | X | Lot |
| | See. lup | X | Lot |
| | E. la. kah. se | f | Lot |
| | Shuy. y. e. o. | X | Lot |
| | Hi. i. uk | X | Lot |
| | Ua. mo. n. i. a. | X | Lot |

| | | |
|----------------------|---|-----|
| Chah. k. | X | Lot |
| Amut. amut | X | Lot |
| Out. ta. kobe | X | Lot |
| Win. ne. ya | X | Lot |
| hlo. out | X | Lot |
| Se. uch. ka. nam | X | Lot |
| She. mah. han | X | Lot |
| Wut. un. a. pum | X | Lot |
| Sunt. a. tad. m. | X | Lot |
| Sunt. a. kich. m. m. | X | Lot |
| Yah. leh. chn | X | Lot |
| To. lahl. kut | X | Lot |
| Gul. lout | X | Lot |
| See. ahts. oot. oot | X | Lot |
| Ye. tahko | X | Lot |
| W. e. po. it. ee | X | Lot |
| Kah. sld | X | Lot |
| X. i. h. hum. han | X | Lot |
| Pah. hoo. at. ish | X | Lot |
| Swe. yehm | X | Lot |
| Sah. huill | X | Lot |
| Se. kwah. t. | X | Lot |
| Kah. hum. hlo | X | Lot |
| Uch. hoo. bah | X | Lot |

shu. bi. hat + Ld 4
 Sil. e. kish / Ld
 sue. kih. nam x Ld
 dit oo. ah x Ld
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 Jack x Ld
 keh. hiss. be. lo x Ld
 Go yeh. hn. x Ld
 sah. putsh x Ld
 William x Ld.

And whereas the said treaty having been
 submitted to the Senate of the United States,
 for its constitutional action thereon, the
 Senate did, on the third day of March,
 One thousand Eight hundred and eighty five,
 advise and consent to the ratification of
 its Articles, by a resolution in the words
 and figures following, to wit:

U. S. Executive Session, Senate of the United States.

March 3. 1855.

Resolved, (two thirds of the Senators present concurring) That the Senate advise and consent to the ratification of the articles of agreement and convention made and concluded on the She-nah-nam, or Medicine creek, in the Territory of Washington, this twenty sixth day of December, in the year one thousands eight hundreds and fifty four, by Isaac J. Stevens, Governor and Superintendent of Indian Affairs of the said Territory, on the part of the United States and the undersigned Chiefs, headmen, and delegates of the Nisqually, Puyallup, Steilacoom, Squawkin, Shomamish, Steh-Chass, T-peuk-sin, Squiaitt, and Sa-Neh-wamish tribes and bands of Indians, occupying the lands lying round the head of Puget Sound and the adjacent inlets, who, for the purpose of this treaty, are to be regarded as one nation, on behalf of said tribes and bands, and duly authorized by them.

I Attest

Lebany Dickinson

(Copy)

Secretary.

Now, therefore, be it known that I
Franklin Pierce,
President of the United States of America,
in pursuance of the advice and consent of
the Senate as expressed in this resolution of
the third day of March, one thousand eight
hundreds and fifty five, do hereby ratify
and confirm the said treaty.

In testimony whereof, I have caused the
Seal of the United States to be hereunto affixed,
having signed the same with my hand.

Done at the City of Washington, this
tenth day of April, in the year of
our Lord one thousand eight hundred
and fifty five, and of the Independence
of the United States, the Twenty
Ninth

Franklin Pierce

By The President

W. L. Macey,
Secretary of State